



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

West Central Regional Office
3019 Peters Creek Road, Roanoke, Virginia 24019
Telephone (540) 562-6700, Fax (540) 562-6725
www.deq.state.va.us

Robert G. Burnley
Director

Steven A. Dietrich
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION A SPECIAL ORDER BY CONSENT ISSUED TO L. H. Sawyer Paving Company

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 10.1-1307.D, 10.1-1309, and 10.1-1184, and § 10.1-1316.C, between the State Air Pollution Control Board and L.H. Sawyer, for the purpose of resolving certain violation(s) of State Air Pollution Control Laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.
6. "L.H. Sawyer" means the corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Facility" means the structure at Salem Industrial Ave. located in Salem, Virginia.

8. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.
9. "Permit" means Stationary Source Permit to Construct and Operate, which became effective February 13, 2002.
10. "O&M" means operations and maintenance.

SECTION C: Findings of Fact and Conclusions of Law

1. L. H. Sawyer owns and operates a facility in the Salem, Virginia. This facility is the subject of the Stationary Source Permit to Construct and Operate, which allows operation of a hot mix asphalt plant and is subject to NSPS regulations.
2. Since the facility commenced operation on April 15, 2003, the following alleged violation has been determined:
 - a. L. H. Sawyer commenced start-up on April 15 2003. (letter received by DEQ stating start-up.)
 - b. L.H Sawyer conducted stack testing on August 14, 2003 as per condition 15 of their February 13, 2002 permit.
 - c. Results of the stack test provided by Fuller Air Compliance on September 8, 2003, indicated that L. H. Sawyer passed the mass emission rate of 10.40 lbs./hr but failed the grain loading of 0.04 gr/dscf @ 12% CO₂ or 7% CO.
 - d. L.H. Sawyer 's failure to meet the emission limits specified in condition No. 11 of their permit dated February 13, 2002 resulted in a Notice of Violation issued on September 10, 2003 for failing to meet condition No. 11.

SECTION D: Agreement and Order

Accordingly the State Air Pollution Control Board, by virtue of the authority granted it pursuant to Va. Code §§10.1-1309 and 10.1-1316, and after consideration of the factors set forth in Va. Code § 10.1-1186.2, orders L.H. Sawyer , and L.H. Sawyer agrees, to perform the actions described below and in Appendices A of this Order. In addition, the Board orders, L.H. Sawyer and L.H. Sawyer voluntarily agrees to pay a civil charge of **\$1050.00** in settlement of the violations cited in this Order.

1. L.H. Sawyer shall pay \$1050.00 of the civil charge within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," delivered to:

Receipts Control
Department of Environmental Quality

Post Office Box 10150
Richmond, Virginia 23240

The payment shall include L.H. Sawyer Federal ID number or Social Security Number. If L.H. Sawyer does not have a Federal ID number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of L.H. Sawyer, for good cause shown by, L.H. Sawyer or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to L.H. Sawyer by DEQ on September 10, 2003. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, L. H. Sawyer admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. L.H. Sawyer consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. L.H. Sawyer declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *et seq.*, and the Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by L.H. Sawyer to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing

herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. L.H. Sawyer shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. L.H. Sawyer shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. L.H. Sawyer shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and L.H. Sawyer. Notwithstanding the foregoing, L.H. Sawyer agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to L.H. Sawyer. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve L.H. Sawyer from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, L.H. Sawyer voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of NOVEMBER 21, 2003.

Steven A. Dietrich for
Robert G. Burnley, Director
Department of Environmental Quality

L.H. Sawyer voluntarily agrees to the issuance of this Order.

By: [Signature]
Samuel R. Carter III COB/CEO
Date: 11/21/03

Commonwealth of Virginia

City/County of Roanoke

The foregoing document was signed and acknowledged before me this 21 day of
November, 2003, by Samuel R. Carter III, who is
Mr. Sam Carter

CEO
CEO of L.H. Sawyer, on behalf of the Corporation.

Mary S. Montrose
Notary Public

My commission expires: June 30, 2007